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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

10 DWIGHT S. BREWER,

11 Plaintiff,

12 v.

13 COASTAL TRANSPORTATION, INC.,  
14 OMEGA MARINE ELECTRIC, ELEKTRO,  
INC. and BLUE NORTH FISHERIES, INC.,

15 Defendants.  
16

Case No. C08-5170RJB

ORDER ON DEFENDANT  
BLUE NORTH, INC.'S  
MOTION FOR  
SUMMARY JUDGMENT  
OF DISMISSAL

17 This matter comes before the court on Defendant Blue North, Inc.'s Motion for Summary  
18 Judgment of Dismissal. Dkt. 49. The court has considered the pleadings filed in support of the motion and  
19 the file herein.

20 PROCEDURAL HISTORY

21 On March 20, 2008, plaintiff filed a complaint for personal injuries under 33 U.S.C. § 905(b)  
22 against Coastal Transportation, Inc. (Coastal), the owner of the vessel COASTAL NOMAD. Dkt. 1.  
23 Plaintiff later filed a Third Amended Complaint, asserting claims for personal injuries under 33 U.S.C. §  
24 905(b) and under general maritime law. Dkt. 29. The Third Amended Complaint added Omega Marine  
25 Electric (Omega), Elektro, Inc. (Electro), and Blue North Fisheries, Inc. (Blue North) as defendants. Dkt.  
26 29. The Third Amended Complaint alleges that Coastal contracted with Omega, Electro, and Blue North  
27 to perform electrical work aboard the COASTAL NOMAD; that, on June 8, 2007, the COASTAL  
28 NOMAD was undergoing ship repair at Marine Industries Northwest, Inc. (Marine Industries); that

1 plaintiff was in the course and scope of his employment; that Coastal was negligent in its capacity as vessel  
2 owner; that Omega, Electro, and Blue North were negligent in their capacity as contractors working  
3 aboard the COASTAL NOMAD; and that as a direct and proximate result of defendants' negligence,  
4 "plaintiff sustained an electrocution injury aboard the vessel COASTAL NOMAD, with resulting chest  
5 pain, left upper extremity weakness and discomfort, fatigue and associated psychological and emotional  
6 injuries." Dkt. 29, at 1-2.

7 On June 18, 2009, Blue North filed a motion for summary judgment, contending that (1) Coastal  
8 hired Marine Industries to perform an extensive retrofit of the COASTAL NOMAD; (2) Coastal Hired  
9 Blue North to perform mechanical work only; (3) Blue North employees did not cut any electrical wires  
10 during their work on the vessel, nor did they disconnect any electrical wires or connections during Blue  
11 North's work on the vessel; (4) Coastal does not know who cut the wire; and (5) plaintiff does not know  
12 who cut the wire. Dkt. 49. Blue North requests that, pursuant to Fed.R.Civ.P. 11, the court award Blue  
13 North the fees and costs it incurred in defending against this suit. *Id.* at 12-13.

14 Neither the plaintiff nor any other defendant filed a response to Blue North's motion for summary  
15 judgment. Pursuant to Local Rule CR 7(b)(2), if a party fails to file papers in opposition to a motion, such  
16 failure may be considered by the court as an admission that the motion has merit. Accordingly, for  
17 purposes of this summary judgment motion, the court has deemed the facts set forth in Blue North's  
18 motion to be uncontested.

#### 19 RELEVANT FACTS

20 Coastal owns the vessel COASTAL NOMAD. Dkt. 50-3, at 2. Coastal hired Blue North to  
21 perform work associated with the preparation and removal of the main diesel engines and reduction gears,  
22 in preparation for the vessel to go to Marine Industries for extensive shipyard work. Dkt. 50-3 at 2.

23 On March 20, 2007, Coastal turned the COASTAL NOMAD over to Blue North to begin work on  
24 the engines and reduction gears. Dkt. 50-3, at 3. The work performed by Blue North took place from  
25 March 20-26, 1007. Dkt. 51, at 2.

26 Andrew S. Williams, Foreman of the Blue North crew, submitted a declaration that sets forth the  
27 uncontested facts regarding what happened, or did not happen, while Blue North performed work on the  
28 vessel. Dkt. 51.

1 The work performed by Blue North to prepare the main engines of the COASTAL NOMAD for  
2 removal consisted entirely of removing or disassembling mechanical connections such as nuts, bolts,  
3 hydraulic couplings, bearings, and the like. Dkt. 51, at 2. In order to accomplish this job, it was not  
4 necessary to disconnect any electrical circuitry or remove any electrical wires from the main engine or  
5 reduction gear. Dkt. 51, at 2.

6 The main engines of the COASTAL NOMAD had a few alarms and control panels attached to  
7 them; this equipment operated on low voltages. Dkt. 51, at 2. Any alarms, control panels, or other  
8 electrical devices that had to be removed from the engines were not electrically disconnected; instead, they  
9 were unbolted or unscrewed from their attachment points and moved aside while still connected to any  
10 wiring to be secured. Dkt. 51, at 2. It was not necessary to disconnect any electrical connections in order  
11 to accomplish these tasks. Dkt. 51, at 2. No electrical connections were disconnected during Blue North's  
12 work on the vessel. Dkt. 51, at 2. No cut wire was present in the engine room when Mr. Williams  
13 completed his final inspection after Blue North finished the work on the vessel. Dkt. 51, at 3.

14 Blue North completed its portion of the work to be performed on the COASTAL NOMAD, and,  
15 on April 24, 2007. Dkt. 50-3, at 3. The COASTAL NOMAD was taken under tow by Western Towboat  
16 to Marine Industries in Tacoma, Washington. Dkt. 50-3, at 3. Coastal hired Marine Industries to lengthen  
17 the vessel and to perform other extensive overhaul work. The shipyard work occurred between the end of  
18 April and the end of June of 2007. Marine Industries delivered the vessel to Coastal on July 3, 2007.

19 In his complaint, plaintiff contends that he was working at Marine Industries in Tacoma on June 8,  
20 2007; that he sustained an electrocution injury aboard the COASTAL NOMAD; and that the injury was the  
21 result of defendants' negligence. Dkt. 29. In his deposition, plaintiff testified that he was doing alignment  
22 on the gear box; that he had a 24-inch Crescent [wrench] in his hand; that he reached over the adjustment  
23 bolt to move the transmission; that wires were coming out of the ground or out of the deck; and that he  
24 somehow touched the wires with his arm. Dkt. 51, at 5. Plaintiff testified that three wires were cut off  
25 flush, "like a saw cut them off or something"; that the three wires were contained in one insulation; and  
26 that this was sticking up from the deck. Dkt. 51, at 6.

## LEGAL STANDARD

Summary judgment is proper only if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c). The moving party is entitled to judgment as a matter of law when the nonmoving party fails to make a sufficient showing on an essential element of a claim in the case on which the nonmoving party has the burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1985). There is no genuine issue of fact for trial where the record, taken as a whole, could not lead a rational trier of fact to find for the non moving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)(nonmoving party must present specific, significant probative evidence, not simply “some metaphysical doubt.”). *See also* Fed.R.Civ.P. 56(e). Conversely, a genuine dispute over a material fact exists if there is sufficient evidence supporting the claimed factual dispute, requiring a judge or jury to resolve the differing versions of the truth. *Anderson v. Liberty Lobby, Inc.*, 477 .S. 242, 253 (1986); *T.W. Elec. Service Inc. v. Pacific Electrical Contractors Association*, 809 F.2d 626, 630 (9th Cir. 1987).

The determination of the existence of a material fact is often a close question. The court must consider the substantive evidentiary burden that the nonmoving party must meet at trial – e.g., a preponderance of the evidence in most civil cases. *Anderson*, 477 U.S. at 254, *T.W. Elect. Service Inc.*, 809 F.2d at 630. The court must resolve any factual issues of controversy in favor of the nonmoving party only when the facts specifically attested by that party contradict facts specifically attested by the moving party. The nonmoving party may not merely state that it will discredit the moving party’s evidence at trial, in the hopes that evidence can be developed at trial to support the claim. *T.W. Elect. Service Inc.*, 809 F.2d at 630 (relying on *Anderson, supra*). Conclusory, non specific statements in affidavits are not sufficient, and “missing facts” will not be “presumed.” *Lujan v. National Wildlife Federation*, 497 U.S. 871, 888-89 (1990).

## DISCUSSION

### **1. Motion for Summary Judgment**

Blue North Requests that plaintiff’s claims against it be dismissed because plaintiff cannot establish that any act of Blue North was the proximate cause of his injury. Dkt. 49, at 12.

1 The Longshore and Harbor Workers' Compensation Act (Longshore Act) establishes a  
2 comprehensive workers' compensation program that provides benefits to longshore workers and their  
3 families for work-related injuries. 33 U.S.C. §§ 901-950. Under this act, the longshore worker's employer,  
4 the stevedore, is shielded from liability beyond payment of statutory benefits. *See Howlett v. Birkdale*  
5 *Shipping Co., S.A.*, 512 U.S. 92, 96 (1994). Under certain limited circumstances, the longshore worker  
6 may seek damages in a statutory negligence action from the owner of the vessel on which he was injured  
7 under 33 U.S.C. § 905(b). *Id.* In addition, 33 U.S.C. § 905(b) allows employees to sue a vessel for  
8 injuries caused by the negligence of the vessel, just as they may sue other third parties for negligence under  
9 § 933. Negligence under maritime law includes the usual elements of duty, breach, injury, cause in fact, and  
10 proximate cause. *See In re Cooper/T. Smith*, 929 F.2d 1073, 1077 (5th Cir.1991).

11 In this case, Blue North has shown that the exposed wire that plaintiff alleges injured him was not  
12 present when Blue North completed its work. Plaintiff has not met his burden to show that Blue North  
13 either breached a duty to plaintiff or that Blue North caused plaintiff's injury. Blue North has shown that  
14 there are no outstanding issues of material fact as to plaintiff's negligence claim against Blue North. Blue  
15 North's motion for summary judgment of dismissal should be granted, and plaintiff's claims against Blue  
16 North should be dismissed.

## 17 **2. Request for Award of Fees and Costs**

18 Blue North requests that, pursuant to Fed.R.Civ.P. 11, it is entitled to fees and costs in defending  
19 against this action. Blue North contends that plaintiff does not have a good faith basis for his continued  
20 prosecution of this action.


21 Blue North did not comply with Fed.R.Civ.P. 11(c)(1)(A), which requires that a motion for  
22 sanctions under Rule 11 shall be made separately from other motions or requests. Further, Blue North  
23 contends that plaintiff indicated that he had located a putative witness who might testify at deposition  
24 that the wire that shocked plaintiff was old in appearance; and that counsel did not want to dismiss the  
25 claims against Blue North until that witness was deposed. Dkt. 50, at 3. At this point, Blue North has not  
26 shown that Rule 11 sanctions, even if properly filed, would be warranted. Blue North's request for costs  
27 and fees for defending this case should be denied.

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2 Therefore, it is hereby

3 **ORDERED** that Defendant Blue North, Inc.'s Motion for Summary Judgment of Dismissal (Dkt.  
4 49) is **GRANTED**. All claims against Blue North, Inc. Are **DISMISSED WITH PREJUDICE**. Blue  
5 North's request for fees and costs (Dkt. 49) is **DENIED WITHOUT PREJUDICE**.

6 The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any  
7 party appearing *pro se* at said party's last known address.

8 DATED this 17<sup>th</sup> day of July, 2009.

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10 Robert J. Bryan  
11 United States District Judge  
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